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U. S. CONG. SENATE. TEMPORARY NATIONAL ECONOMIC COMMITTEE
LETTER...TRANSMITTING A PRELIMINARY REPORT. 1939

76TH CONGRESS, 1st Session | SENATE | DOCUMENT No. 95

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

LETTER

FROM THE

CHAIRMAN OF THE TEMPORARY NATIONAL ECONOMIC COMMITTEE

TRANSMITTING

A PRELIMINARY REPORT

PURSUANT TO

Public Resolution No. 113

(Seventy-fifth Congress)

AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO MAKE A FULL AND COMPLETE STUDY AND INVESTIGATION WITH RESPECT TO THE CONCENTRATION OF ECONOMIC POWER IN, AND FINANCIAL CONTROL OVER, PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES

JULY 17 (legislative day, JULY 10), 1939.—Referred to the Committee on the Judiciary and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1939

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[NOTE.—Vacancies on the committee exist as of June 30, 1939, due to the resignations of Admiral Christian Joy Peoples, Director of Procurement, alternate to Joseph J. O'Connell, Jr., representing the Department of the Treasury; and Mr. Richard C. Patterson, Jr., Assistant Secretary of Commerce, representing the Department of Commerce]

*Alternate.

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LETTER OF TRANSMITTAL

JULY 14, 1939.

DEAR MR. PRESIDENT: I have the honor to present for the consideration of the Senate a preliminary report concerning the work of the Temporary National Economic Committee.

This report is made pursuant to the terms of section 4 (a) Public Resolution No. 113, Seventy-fifth Congress.

Sincerely,

JOSEPH C. O'MAHONEY
Chairman.

Hon. JOHN N. GARNER,
United States Senate.

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

THE PROBLEM

People who are able and willing to work cannot find employment.

People who are hungry cannot provide themselves with food.

People who produce what the idle and the hungry need cannot sell it, and, indeed, can find a market for only a small portion of what they are capable of producing.

Owners of money and owners of machines cannot put their property to sure and certain use.

The abundance of nature mocks the intelligence of men who seem incapable of distributing it among their own kind either equitably or profitably.

Everyone seems to agree that a prosperous economy depends not only upon the production and distribution of goods and services but also upon the free participation of all in the work of producing and distributing them and in the profits of the whole activity.

There is no single element of the population which does not honestly desire to promote production and distribution. The general prosperity for which everyone longs depends upon it. Even more important than that, however, the survival of the system of private property itself depends upon the restimulation of economic activity. Yet, with resources of men and materials altogether adequate to attain the objectives desired by all and to furnish plenty for all, the oppressive fact remains that the economic machine is stalled on dead center. The people are unable to serve their own economic welfare.

It was while business had a free hand, practically undisturbed by Government intervention, that the first crashing evidences of the failure of the economic machine appeared. The problem of agricultural surpluses, the problem of mineral surpluses, the railroad problem, the problem of surplus labor, and the appalling problem of deficiencies of food, shelter, and clothing for millions were all symptoms that developed long before Government undertook to prevent the liquidation of business and to provide employment by made-work.

Government acted. But the evidences of the failure of the economic machine have not disappeared. People are still without jobs. Farmers are still without satisfactory markets. Industry is still without sufficient purchasers. We are still enmeshed in an economy the rate of growth of which is decreasing.

ORGANIZATION OF THE COMMITTEE

In this critical position, the greatest national need is a dispassionate survey of economic facts to discover, if possible, not what will best serve the interests of a particular group or class, but what will best serve the public interest as a whole.

It was to make this survey that the Temporary National Economic Committee was called into existence. The President and the Congress believed that it should be undertaken at once, in order, quoting the words of the President's message of April 1938, "to preserve private enterprise for profit by keeping it free enough to be able to utilize all our resources of capital and labor at a profit."

Private enterprise, the profit motive, the free utilization of capital, the full employment of labor—the maintenance of these is the objective of the study which the Congress has authorized, a study to be conducted by a committee representing first the legislative branch of the Government and second those executive agencies which have been primarily concerned with the administration of laws affecting the general economy. Created by Public Resolution No. 113, approved June 16, 1938, following the special message delivered to Congress by President Franklin D. Roosevelt on April 29, 1938, this Committee is composed of 12 members divided as follows: (1) Three Members of the Senate appointed by Vice President John N. Garner; (2) three Members of the House of Representatives appointed by Speaker William B. Bankhead; (3) one representative from each of the following executive departments and commissions: Department of Justice, Department of the Treasury, Department of Labor, Department of Commerce, Securities and Exchange Commission, and Federal Trade Commission.

The Committee has approached its task solely with the intention of coordinating and summarizing as much factual evidence as possible on the operation of the economic system, in the firm belief that an intelligent solution of the admittedly difficult problem can best be perfected when the people see the problem as a whole.

To this end the field of inquiry was divided among the executive agencies in order that they might in the first instance and in accordance with the directions laid down in the resolution creating the Committee present materials within their own respective jurisdictions. It was decided that the results of significant studies should be presented at public hearings in order that they might be more readily available to the general public as well as to the Congress. Recognizing that it would be impossible to pursue this method with respect to all of the studies, the Committee has arranged to gather material for written reports consisting not only of case studies of various industries but also of analyses of economic conditions which have an important bearing on its problems.

ASSIGNMENT OF STUDIES

For the purposes of this preliminary report only a brief outline of the work to date is presented.

To the Department of Commerce was assigned a general study of the structure of industry, of the taxation of business enterprises, of the development of trade barriers, together with a survey of trade associations and similar organizations formed by those who carry on commerce.

To the Department of Labor was assigned the problem of determining the wage earner's place in modern industry, a study of labor costs and wages, and, from the point of view of the consumer, a study of prices and price policies.

To the Federal Trade Commission, in the light of its long experience in the administration of certain of the antitrust laws, was committed the task of studying competitive practices in a wide range of industries, monopolistic practices, business complaints alleging restraints of trade, and also a study of the feasibility of suggestions for Federal charters or licenses for corporations engaged in interstate commerce.

To the Department of Justice, which from the beginning has been clothed with responsibility for enforcing the antitrust laws, was also committed a complementary study of monopolistic practices, devices for the control of commerce by those engaged in it, the effect of patent law and patent practices upon the general economy.

The Securities and Exchange Commission was asked to deal with the financial side of business, with particular attention to insurance, banking, and the use of the corporate device.

To the Treasury Department, which through the Procurement Division has had wide experience with the subject matter, was assigned the study of prices under Government contracts as well as a broad research into the field of antitrust legislation.

The office of Executive Secretary was created for the purpose of coordinating the activities and studies of the various agencies to prevent overlapping of work and to make possible the most efficient utilization, as authorized by the resolution, of the information and cooperation of agencies of the Government not represented upon the Committee.

To supplement the work of the various member agencies in thus studying and presenting certain phases of the general economy, the Committee also recognized the desirability of general studies under the supervision of the Committee as a whole and of inviting the presentation by industrial leaders and by industry itself of an independent point of view. Leaders of the oil industry have availed themselves of this opportunity to tell their own story of the development, organization, and method of their industry.

In the time which remains before the January session of Congress the Committee and its staff will make every effort to present as comprehensive and objective a picture of the modern economy as is possible.

PLANS OF THE COMMITTEE

The Committee does not plan legislative hearings in the ordinary sense. It has no legislative jurisdiction. As in the case of its intensive study of the use of patents in the automobile manufacturing, the glass container, and the beryllium industries, it will be content to develop facts and in proper cases to make recommendations, leaving to the standing committees of the House and the Senate the full jurisdiction and responsibility for drafting and perfecting any legislation that may be deemed necessary.

The Committee has already recommended, as more fully set forth hereafter: (1) A modification of patent law procedure; (2) prohibition upon the use of patents for the establishment of trade restrictions; (3) the enactment of legislation amending the Clayton Act so as to prohibit one corporation from acquiring the assets as well as the stock of a competing corporation; and (4) legislation to provide civil remedies for the enforcement of the antitrust laws.

S. Doc. 95, 76-1——2

No other recommendations have as yet been considered by the Committee, and no forecast can now be made of the nature or content of the final report. Literally hundreds of suggestions and memoranda are being received by the Committee and are being carefully catalogued and studied. It is the purpose of the Committee that no constructive suggestion that may contribute to the solution of acknowledged problems will be overlooked. Every opportunity will be extended to every element of our economic system, within the time available, to give expression to its views.

LINES OF INVESTIGATION

While it is impossible now to give any specific indication of what the final conclusions may be, it is possible to catalog certain broad questions which are under examination.

Are the obvious maladjustments of modern economy due wholly or in part to a decline in competition?

What is the effect upon competition, upon unemployment, upon prosperity, of the substitution of organized commercial effort for individual commercial effort?

Is there any different rule for competition among corporations from the historic rule which governed competition among individuals? To what degree, in what areas, and by what agencies has competition as an automatic regulating force been set aside?

What circumstances and agreements and conditions govern price and production policies?

What justification is there for the allegation so frequently made that the antitrust laws are vague and inadequate, and what should be done to make them more definite?

What are the effects of concentration of economic power and of size upon commercial activity, trade, employment, and the distribution of income?

Are concentration and size inevitable consequences of scientific development?

How is economic activity affected by the character of income distribution and what is the effect on agricultural and industrial output of unemployment, seasonal employment, low-wage income?

To what extent and in what manner may purchasing power be increased?

What are the effects on business of State and Federal tax laws, regulatory laws, laws reflecting industrial and economic policies?

What are the proper standards for corporations doing interstate business?

Why has new investment lagged? Is this lag likely to continue? What opportunities are there for "private" investment? What can be done to restimulate the forward drive of the American economy?

What public policies should be adopted to put an end to unemployment, the inability of people to support themselves, and to promote an ever-rising standard of living for all the people, so that democratic institutions may justify themselves by establishing and guaranteeing a prosperous economy in which all elements of society may participate?

SUMMARY OF HEARINGS

A substantial portion of the preparatory work has been completed. The committee is ready to move ahead on a number of fronts with very little need for further exploration. After a summer recess, public hearings will be resumed in the fall, and in the meantime the preparation of agency reports will be in progress. This section of the preliminary report, summarizing some of the hearings, indicates the character of the information being developed.

ECONOMIC PROLOGUE

The introductory hearings were scheduled to lay out an economic background, to define the nature of the basic social and economic problems, and to indicate some of the important gaps in factual knowledge. This task was performed by three economists, Mr. Isador Lubin, Commissioner of Labor Statistics, Dr. Willard Thorp, advisor on economic studies of the Department of Commerce, and Commissioner Leon Henderson, of the Securities and Exchange Commission, then executive secretary of the Committee, under whose general direction the studies of the agencies were coordinated. In the interests of brevity only one or two important points developed by each of them are here noted.

Mr. Lubin, the first witness, estimated the amount of the national income lost during 1930 through 1938. If business had been maintained at the 1929 level, the income for this period would have been increased by the following amounts: Total employment in nonagricultural occupations, 43,000,000 man-years; salaries and wages in nonagricultural occupations, $119,000,000,000; dividends, $20,000,000,000; gross farm income, $39,000,000,000.

Making no allowance for price changes, the total loss in national income amounted to $230,000,000,000, but after adjustment for the decline in prices, the loss in national income amounted to $133,000,000,000.

Mr. Lubin presented results of a study of family expenditures at different income levels. Only 2.7 percent of the families in the country have incomes of $5,000 or more, less than 13 percent have incomes of $2,500 or more, while 54 percent have incomes of $1,250 per year or less.

Assuming that the income of those families receiving less than $1,250 per year could be increased by $2.25 a day, Mr. Lubin said:

They would buy $800,000,000 worth of food more than they buy now. They would increase their purchases of clothing by $416,000,000. They would increase their purchases of housing or rents by $613,000,000. They would spend $213,000,000 more for fuel, light, and refrigeration, $385,000,000 more on transportation, automobiles, etc., $73,000,000 more on personal care, $234,000,000 more on recreation, and an additional $208,000,000 on medical care.

Mr. Lubin testified: Moderate increases in the incomes of all families or single individuals receiving less than $2,500 would absorb the output of most of the surplus capacity in the United States. In many industries our present capacity would be insufficient.

Dr. Thorp, the second witness, discussed the distribution of employees and employers by size of concern on the basis of statistics of the Social Security Board. One hundred and ninety-five large enterprises, those employing 10,000 or more employees, had 12.3 percent of all the workers. Approximately 50 percent of the firms had only 4 percent; while those firms employing over 250 persons, accounting for only about 1 percent of the total number of employers, had 50 percent of the employees.

As a further measure of size, Dr. Thorp analyzed data from the files of the Bureau of Internal Revenue. Contrasting the firms with large assets and those with small assets, he found that 780 large firms, or 0.2 percent of all corporations, hold 62 percent of the total assets of all corporations. At the other end of the scale, 55 percent of the firms, those with assets under $50,000 account for only 1.4 percent of the total assets of all corporations.

Discussing large corporations with assets of $5,000,000 and over, Dr. Thorp showed the percentage of corporate assets held by these concerns in specified industries. They were most important in transportation and other public utilities, and finance, manufacturing, and mining and quarrying industries—accounting for from over 60 to more than 90 percent of the total assets of these industries. In the trade, service, agriculture, and construction industries, the corporations with assets of $5,000,000 or more accounted for less than 40 percent of the total assets of all corporations in these fields.

Manufacturing corporations with assets of $5,000,000 and over held over 90 percent of the assets of all corporations manufacturing tobacco products; over 80 percent of the assets of all corporations manufacturing chemicals and allied products. For the others the percentage ranged down to less than 30 percent for the liquor and beverage industry.

Dr. Thorp stressed that there are a number of industries with a comparatively few large enterprises in a dominant position. The pattern is not so much a matter of one company dominating each industry but rather that there are a few large companies in a cluster.

Mr. Henderson, the third witness, estimated the total employable population to be above 54,000,000. He said that if we were to reduce the volume of unemployment to the level of 1929 it would be necessary for the industries of the country to produce about 18 percent more goods than in 1929. In other words, the Federal Reserve index of industrial production, which averaged 119 in 1929 on a 1923–25 base of 100 would have to rise to 140.

Mr. Henderson reviewed certain "basic assumptions" of the American system. He said the American system has emphasized the dignity of the individual, his resourcefulness, and has placed reliance essentially on the ability of individuals, in free association, to design affirmatively the main forms and directions of life. Its basic legal institutions have included private property and freedom of contract, with the collateral assumption of approximate equality of bargaining power.

It has assumed acceptance of minimum but workable rules of law, democratically determined, under which each individual, in pursuing his personal self-interest, would also serve the logical interest of the community. It has rested on a belief that there should be no long-term restriction of the international flow of goods, or of the freedom of the individual to make economic decisions at his own risk.

It has placed its faith in the function of price and the market mechanism as the best possible forces for the allocation of productive resources and the determination of distributive shares to worker, investor, owner, and risk-taker alike. It has had a concept of the free market as one which no buyer or seller should dominate. Implicit, but less well defined, have been assumptions of mobility of labor and capital, almost unlimited land and natural resources. It has likewise been tacitly believed that the economy and its population would expand indefinitely, and that all possible savings could be readily employed in natural expansion of facilities for serving customers.

PATENTS

Four hearings on patents have been held before the Committee. Three hearings, presented by the Department of Justice, dealt with the automobile, glass-container manufacturing, and beryllium industries. The Department of Commerce presented a study concerned primarily with procedural aspects of the present law.

The particular emphasis of the three industry studies was on the manner in which patents may be employed to bring about concentration of control, or are used beyond the simple constitutional purpose to "promote the progress of science and useful arts."

The witnesses from the automobile industry were virtually unanimous that the patent device, while useful for relatively minor purposes, is not of critical importance to their industry. Some of the witnesses from this industry were willing to dispense entirely with patents. Some thought they were useful to protect against infringement suits, or to provide income from royalties to reimburse companies for research expense.

It was evident that the fact that automobile manufacturing has reached a high stage of development has reduced the importance of patents to this industry. Improvements in automobiles tend, the witnesses said, to be of an engineering and evolutionary, rather than revolutionary, character. If there should be a basic invention, the evidence indicated patents might be viewed differently. It should be noted that this hearing was, and these observations are, limited to the manufacturing and not to the parts and accessories section of the automobile industry, where patents are of more importance.

In the glass-container-manufacturing industry, an entirely different situation was presented. The evidence showed that control of patents in two companies—the Hartford Empire Co. and the Owens-Illinois Glass Co.—allowed them legally to dominate the industry.

Through this control, production has been adjusted and allocated, and prices stabilized, indirectly, at least, through the maintenance of the production rate. The witnesses pointed out that an excess capacity to produce is the rule, but it is evident that this capacity has not markedly affected prices. Prices are further stabilized through the practice of what was described as price leadership where the largest producer of a particular item sets his price and the other producers follow that price.

The patent monopoly was further employed through the refusal to grant licenses, to prevent new enterprisers from starting new glass-container plants. This was done with consideration by those in control of the status of competition and plant capacity. Large interests in the industry often resorted to litigation to protect their patents with the result that some producers were eliminated. Some of those prevented from entering the industry or eliminated from it apparently were persons of means and responsibility. In certain instances, these policies of control have limited the number of competitors in given geographical areas.

The several witnesses presented by the Department of Commerce unanimously agreed that the basic protection of the patent system is essential to business and industry. They also agreed almost wholly with the recommendations for procedural changes which were made to the Committee by Conway P. Coe, Commissioner of Patents.

Commissioner Coe introduced a great deal of statistical evidence to show how the present law is abused. Suits for infringement often are brought in several judicial circuits without regard to the prior decisions in other circuits. The person of small resources is definitely hard put to meet this pressure. Holders of patents take advantage of the opportunities for delay so that it is quite common for the patent monopoly to extend far beyond the legally contemplated 17 years. In one instance, the period of exclusive use was thus extended to 44 years.

The growing importance of large-scale research in our economy also was illustrated by this testimony. The evidence will not permit us to say conclusively that there is a tendency toward the concentration of control of invention in large enterprises. The witnesses frequently testified that lack of resources will not prevent the individual from making epochal discoveries. Nonetheless it seems clear that as more and more resources are placed in the hands of able scientists under the direction of large corporations that these corporations will more and more direct the march of technical advance to a much greater degree than will be possible for the enterpriser of small means. The testimony gives us little information as to the control of what may be called key patents.

The beryllium hearings focused attention on an "infant industry" and showed how attempts at control, elimination of competition, and even cartelization were being made in the very early stages of this industrial development. The interest of foreign companies and the work of their agents was disclosed.

The industrial use of beryllium is of comparatively recent origin. Its distinctive quality is the fact that an addition of as little as 2 percent of beryllium to copper makes an alloy of unusual strength, hardness, and fatigue-and-wear resistance such that few metals can equal it. The alloy also finds application in war industries.

The modern beryllium industry was originated in Germany in the 1920's by the Siemens & Halske Co., a huge concern with interests in all parts of the world. The testimony developed that Siemens & Halske contacted the American Metal & Thermit Co. of New York, which, for a time, held Siemens & Halske's patents and secured additional ones in the Patent Office, when the German company believed that the American Patent Office was prejudiced against a foreign company.

Meanwhile, the Beryllium Corporation of America, Andrew J. Gahagan, president, entered a cross-licensing agreement with Siemens & Halske in 1934. At the same time the Brush Beryllium Co. began the production of beryllium independent of these patents. These two are the chief producers of the master alloy. Their chief customers are the American Brass Co. and Riverside Metal Co., who fabricate the metal.

Beryllium Corporation's agreement with Siemens & Halske provided that the former company receive the Americas as exclusive territory, while the latter company had a similar right in Europe. This disbarred any American sales of beryllium in England. The British Government, however, did not like the idea of being bound to Germany for its beryllium. Hence, according to Mr. Gahagan, the Vickers Co. was able to bring about a change in the Siemens & Halske contract which permitted American sales of beryllium to England by threatening to invoke the Compulsory Licensing Act of 1882 against the Siemens & Halske Co.

Cooperation between the Beryllium Corporation and Siemens & Halske was indicated by certain testimony. The P. R. Mallory Co. wishes to do certain beryllium business in England through a subsidiary; Siemens & Halske threatened a patent suit against them in England unless the American company (Mallory) agreed to purchase all of its beryllium from the Beryllium Corporation. The pressure of the German company was apparently sufficient to force this arrangement.

A most significant factor, aside from patents, in the American beryllium situation is the fact that the price of beryllium copper products rose continually while the price of the master alloy decreased by 50 percent. The testimony showed that American Brass Co. is the price leader for these products, and that Riverside Metal Co., the only other fabricator, followed the lead of American Brass automatically. The price of copper played a minor role in these increases.

INSURANCE

The Securities and Exchange Commission offered evidence on the insurance business.

The first hearings on insurance were primarily important for establishing certain facts with respect to concentration of control of life-insurance assets and perpetuation of managements. Further hearings have been held on intercompany agreements and other matters, but these were not completed in time for inclusion in this report.

At the outset of the hearings, Chairman William O. Douglas, of the Securities and Exchange Commission, stated:

> No policyholder need have any concern that any facts brought out in this inquiry will in any way jeopardize the protection which he counts upon through his insurance policy.

The testimony pertained to legal reserve life-insurance companies only. It was shown that there were in 1937 approximately 308 legal reserve life-insurance companies with total assets in excess of $27,650,000,000. These companies are estimated to have 64,000,000 policyholders. At the end of 1938, insurance in force was estimated at $110,000,000,000.

Legal reserve life-insurance companies have absorbed more and more of the country's savings. In 1937 the assets of these companies exceeded by almost $10,000,000,000 the combined assets of savings banks and building and loan associations in this country, and are far greater than the savings deposits in State and National commercial banks. In fact, while the population has doubled since 1890, life-insurance assets have been multiplied 25 times. So great have the assets become that industry and Government discover themselves increasingly dependent upon life-insurance companies for essential financing. To illustrate, as of December 31, 1938, the 49 largest legal reserve life-insurance companies owned 11 percent of the direct and guaranteed debt of the United States Government; 9.9 percent of all State, city, municipal, and political subdivisional debt; 22.9 percent of all railroad bonds; 22 percent of the entire public-utility debt; 15 percent of the industrial debt; 11 percent of all farm mortgages; and 14 percent of all city mortgages.

The growth of total assets was emphasized by the fact that while insurance in force increased less than $2,000,000,000 in the last 7 years, insurance assets (and liabilities) increased $7,500,000,000. Assets and liabilities have increased at this extraordinary rate largely because of factors which seem to operate automatically, such as the normal increase of reserves necessary to fulfill long-time contracts, a process independent of new business written. The recent expansion of activities, represented by the annuity business, the prepayment of premiums, and the practice of allowing the proceeds of policies to remain on deposit, has contributed to the growth of insurance assets.

The general rise of the assets is reflected in the expansion of particular companies. One company today has assets of about $5,000,000,000 and each of 5 others have over a billion dollars. The 25 largest companies own 87 percent of all the assets; 16 of the 25 own 80 percent of all the assets; and the 5 largest own 54 percent. The testimony indicated that certain insurance officials believe there is no "ceiling" to the possible size of individual companies.

The direction of the investment of the huge reservoir of funds rests with the officers of a comparatively few companies in a limited eastern area. Sixteen companies whose home offices are located in the New York area and in New England own 74 percent of all the assets.

Most of the large life-insurance companies are mutual companies; i. e., companies which are legally owned and in theory controlled by their policyholders. The boards of directors are periodically elected by the vote of the policyholders and theoretically are responsible to policyholders for the efficiency of management. Considerable testimony was adduced to determine the extent to which policyholders of mutual companies actually influence their managements. For example, in considering the all-important question of the machinery by which policyholders select and elect a director, it was found that under the New York law (the law controlling the operations of many principal companies) it was virtually impossible for the policyholders to elect a director who had not been selected by existing directors. The companies examined were found in most cases to follow the minimum statutory election requirements—in themselves meager—and to give no notice to policyholders of their right independently to nominate directors. After the time limit for making such independent nominations had passed, some companies through special notices

or otherwise made gestures of creating interest in the elections. Directors of such companies are practically self-perpetuating groups, it was demonstrated. In one instance, that of the Metropolitan Life Insurance Co., it was testified that ballots bearing the names of the candidates selected by the management for election to the directorate were distributed to the company's agency offices and that the agents were expected to secure the signatures of policyholders. Although the management disclaimed all knowledge of the practice, it developed that some agents who had been required to produce a specific quota of signed ballots, realizing that the election was only a formality, indulged in the practice of signing names of policyholders to the ballots without the knowledge or authority of the policyholders.

Testimony was heard from one company which succeeded in getting independent nominations from policyholders, with the result that greater participation of policyholders in the elections resulted. Another company provided for an annual audit conducted under the direction of a policyholders' committee authorized to examine company operations in detail and to discuss changes in management policy with chief executive officers. This contact of policyholders with management problems, though unique, was found to be of practical advantage.

Some testimony was elicited with respect to interlocking directorships. The boards of certain large companies were found to be closely integrated with banks, industrial concerns, railroads, and other business enterprises.

In some cases, directors of insurance companies used their influence to channel the patronage of insurance companies to law firms, banks, other enterprises with which they were also affiliated. As in these cases the direct solicitation of patronage by directors was apparently regarded as routine, although it often was felt that favors should be dispensed only if no injury to the policyholders seemed likely to result. In the case of the Northwestern Mutual Life Insurance Co., all possible conflicting relations of directors were scrupulously avoided.

MONOPOLISTIC PRACTICES

The Federal Trade Commission opened with a prologue in which was expressed its attitude and desire that free, open, and fair competition be fostered and protected and that not only should there be no relaxation in the enforcement of the laws against monopoly but that such laws should be strengthened. The Commission's attitude was that free competition and initiative are essential elements in the preservation of the capitalistic system and that free, competitive enterprise, in turn, is necessary foundation for democratic government. The Commission then presented to the committee a factual survey of corrective proceedings taken by it pursuant to its powers and duties involving unlawful monopolistic practices and restraints of trade in interstate commerce.

The said survey consisted of a summary of cases with supporting evidentiary documents, governing some of the Commission's recent law-enforcement activities, embracing some 59 selected cases in which the Commission had issued cease-and-desist orders against various kinds of monopolistic practices and restraints of trade. This case presentation related to cases in which the Commission had issued findings as to the facts and orders, from which there was either no

appeal or, in case of appeal, the orders of the Commission had been affirmed by the courts. A wide range of commodities and numerous types of monopolistic practices were illustrated by these cases. While there was a wide variation in type, generally the practices interfered with the natural play of competitive forces by concentrating power to control the market and enhance prices in the hands of a restricted number of sellers, which power had been used to suppress competition to the injury of the public the Commission found.

Based on its experience, the Commission pointed out where certain sections of the antitrust laws should be strengthened by supplemental legislation, and specifically suggested an amendment to section 7 of the Clayton Act, to forbid the acquisition by corporations of assets of competitor corporations as well as the acquisition of the capital stock of such corporations, which is already forbidden.

A comprehensive summary of available economic material obtained during numerous investigations made at the direction of Congress and during the handling of formal complaints filed with the Commission during the 7 preceding years showed the prevalent practices in each industry investigated and the Commission's conclusions and recommendations. Included in this material were studies of public utilities, agricultural income, chain stores, farm machinery, and milk and milk products.

The Commission presented factual data covering restraints of trade in a few selected industries, including the sulfur and the whisky industries. In the sulfur industry, competition had practically ceased. In the whisky industry, prices were shown to be remarkably out of line with the cost of production. The study of this latter industry disclosed not only the development of substantial concentration in the short space of 5 years, but the domination of a few large units of the industry, almost from its inception.

The Commission's presentation, in addition to oral testimony, included a prepared statement on the economic effects of the basing-point system in the steel industry. This statement undertook to explain the employment of the device of the basing-point system as a method of fixing and maintaining identical delivered prices.

With regard to the Federal Trade Commission's presentation, certain general statements can be made at this time, Clearly, practices which destroy the natural effects of competition are widely current in the American economy. The Commission described 45 such practices. Sometimes the Government is accused of interfering with business in its enforcement of the antitrust statutes. In this hearing the significant fact was developed that the Commission's cases had been instituted on the basis of specific complaints of businesses which had been injuriously affected by other businesses. Enforcement of the antitrust law was then shown not to be the result of Government interference, but rather at the petition of private enterprise which was suffering from monopolistic practices.

That the antitrust statutes, particularly section 7 of the Clayton Act, have been circumvented was clearly demonstrated. Certainly, the present statutes have not served adequately to eliminate or prevent continuation of such practices. Recognition of the fact is, of course, no answer to the problem, but it will clear the field for

whatever action is believed advisable in order to attain some degree of consistency between the facts as they are and our attitudes toward them. The Committee finds that the Commission's experience does prove the pervasive existence of restraints of trade.

The Committee is of the opinion that the sooner the widespread existence of monopolistic practices in commerce is recognized and acknowledged, the sooner the country can get down to the business of determining what to do about it. While there may be differences of opinion as to the solution, there is no point in disputing the fact.

Hearings not summarized in this report dealt with consumer problems, investment and savings, insurance agreements and construction. The full text of all hearings is in process of preparation for publication at the Government Printing Office. The first three volumes, dealing with the prologue, with patents in the automobile manufacturing and glass industries, and with the presentation by the Department of Commerce on the subject of patents, have already been published and may be purchased from the Superintendent of Documents, Government Printing Office. The fourth volume, dealing with the presentation by the Securities and Exchange Commission, will be ready for distribution shortly.

RECOMMENDATIONS

PATENTS

Except for certain items, the study has not been carried far enough to warrant specific and detailed legislative recommendations. The Committee does feel, however, that modification of the patent laws should be undertaken by Congress forthwith. It endorses the action of the Committees on Patents of the two Houses which have approved the proposals for modification of the mechanics of the patent system as submitted by the Department of Commerce. The proposals of the Department of Commerce were developed at hearings before the Committee, and are herewith formally recommended to the Congress.

In addition, the Department of Justice has submitted certain recommendations for legislation based on its hearings, designed to draw a sound line between the legitimate use of patents and uneconomic extensions of the patent privilege which seriousjy invade the national policy against monopoly and restraints of trade. The recommendations of the Department of Justice relate primarily to the misuse of patents to effect restrictions upon price and production and upon freedom of opportunity for competitive enterprise. They, too, are approved by the Committee for immediate action by Congress. Summaries of the recommendations of both agencies are hereinafter set forth.

The Department of Commerce suggests:

1. A single court of patent appeals, having jurisdiction coextensive with the United States and its Territories, should be created. Such a court would reduce the time and cost of litigation, and would end the conflict of decisions between the various appellate tribunals, before whom cases often are brought for the purpose of harassing both inventors and others who cannot afford to fight back, and corporations which must contest ridiculous claims.

2. The life of a patent should be limited to 20 years from the date of filing application, to obviate the possibility of a patentee's prolonging a patent monopoly by keeping his application in the Patent Office for a number of years. If a 20-year law is enacted, a patentee who diligently prosecutes his application and obtains his patent in 3 years would enjoy the full 17-year monopoly. If, however, he delays the prosecution, or attempts to keep his case in the Patent Office, he will be positively penalized by the shortening of the monopoly.

3. Not all the delays in the Patent Office are the fault of the applicant, and indeed some cannot be avoided. This is especially true when his application becomes involved in an interference proceeding instituted for the purpose of determining priority between him and another applicant. There is no question that the interference procedure has been greatly abused, and that in some instances it has been invoked for unworthy purposes, as, for example, to delay a competitor's application in the Patent Office. It is evident that concurrently

with the enactment of the 20-year proposal there must be a radical change in interference procedure.

It is recommended that the interference procedure be terminated with a single decision of the examiner of interferences and that a patent be promptly granted on the basis of that decision. This would abolish all appeals to the Board of Appeals within the Patent Office in interference cases.

From an adverse decision of the examiner of interferences, appeals would be taken directly to a court which could, in a single proceeding, review the decision of the examiner of interferences.

4. Renewal applications should be abolished. Under the present practice an applicant may prosecute his application to the point of allowance, fail to pay the final fee required by the law, and thereafter renew the application and resume prosecution. This procedure seems to be wholly unnecessary, and its abolition is recommended.

5. Under the present law an inventor may make public use of his invention for 2 years before filing his application. As a further step in accomplishing an earlier filing of the application looking to an earlier issuance of the patent, it is recommended that the public use period be reduced from 2 years to 1.

6. The present law allows an applicant 2 years within which to copy claims from an issued patent for the purpose of asserting the priority of his invention. As a parallel to the other steps which have been recommended to rid the patent procedure of this element of elapsed time, it is proposed that this period of 2 years also be reduced to 1.

7. Finally, it is recommended that the authority of the Commissioner of Patents be enlarged so that under proper circumstances he may require an applicant to respond to an office action within less than the normal statutory period of 6 months. This grant of authority is necessary to the curtailment of the period of pendency of applications.

The Department of Justice suggests:

The record before the Temporary National Economic Committee abundantly demonstrates that patent practices now current, under the assumed protection of existing statutes and judicial decisions, greatly exceed the measure of privilege which might presumably be deemed necessary "to promote science and useful arts," and seriously invade the deep-rooted national policy against monopoly and restraints of trade, of which the antitrust laws are the most popular reflection. It seems clear that:

1. It should be made unlawful for any person to sell or assign a patent, or to grant any right or license under a patent, on any condition which restricts the assignee or grantee in respect of the amount of any article which he may produce under the patent, the price at which he may sell any such article, the purpose for which or manner in which he may use the patent or any article produced thereunder, or the geographical area within which he may produce or sell such article. The foregoing prohibitions should be supplemented by a further prohibition against any other restriction embodied in a condition to any such assignment or license, which would tend substantially to lessen competition or to create a monopoly, unless such restriction is necessary to promote the progress of science and useful arts. These prohibitions, however, should not apply to any assignment of a patent or any grant of a license under a patent for use exclusively outside the United States and its territories and possessions.

In short, the owner of a patent would enjoy the full patent monopoly if he elected to retain the exclusive privilege of producing or selling under the patent himself. He would be free to assign the patent; to grant an exclusive license; and to grant licenses to anyone he pleased. But, if he grants a license, the license must be general and unrestricted, unless he is prepared to demonstrate that a particular restriction (other than restrictions in respect of price, production, use, or geographical area) is necessary to promote science and useful arts. Restrictions in respect of price, production, use, or geographical areas would be unconditionally outlawed.

2. It should be made unlawful for any person to whom a patent has been issued or who has in any other way acquired any patent or any interest in or right or license under a patent, to sell, lease, or otherwise dispose of any article produced or sold under such patent or any such right or license on any restrictive condition of the kind described in paragraph 1.

3. It should be made mandatory for any sale, assignment, or other disposition of any patent or of any interest in or right or license under a patent to be evidenced by an instrument in writing. Similarly, any condition, agreement, or understanding relating to any sale or other disposition of any article produced or sold under a patent by a person to whom such patent has been issued or who has in any other way acquired such patent or any interest in or right or license thereunder, should be required to be evidenced by an instrument in writing. The seller or assignor in such case would be required to file a copy of such written instrument with the Federal Trade Commission within 30 days after execution. A register of these copies should be kept by the Federal Trade Commission, and both the register and the copies should be held available for inspection by the Attorney General, the Commissioner of Patents, or any officer designated by either.

4. No action based upon a charge of infringement of any patent, whether for damages, for an injunction, or for any other relief, should be permitted against any licensee under a patent or against any purchaser or lessee of any article unless either (*a*) the plaintiff has previously prosecuted to successful judgment an action against the grantor of the license or the seller or lessor of the article, as the case may be, for infringement arising out of or in connection with the granting of such license or the sale or lease of such article; or (*b*) jurisdiction over the grantor, seller, or lessor cannot be obtained in any court of the United States.

A provision to the foregoing effect would help meet one of the most serious abuses in the patent field: The use of litigation as a deliberate weapon of business aggression, rather than as an instrument for adjudicating honest disputes.

5. If any person who owns a patent or an interest in or exclusive right under a patent, violates any of the prohibitions described in paragraphs 1 and 2 above, he should forfeit his patent or his interest in or right under a patent to the United States, and such forfeiture should be recoverable in a civil action against such person by the United States. It should be provided that, upon a proper showing in such an action, a judgment should be entered requiring the

defendant to assign his patent, or interest in, or right under a patent, to the United States, such assignment to be received by the Secretary of the Treasury in the name of the United States. Thereafter, the patent or patent right would be offered for sale under the direction of the Secretary of the Treasury in the manner prescribed by law.

A provision to the foregoing effect would adapt to the patent situation a familiar principle of law: That the abuse of a privilege granted by the State—e. g., public-utility franchises, licenses to sell securities, etc.—should result in forfeiture of that privilege. In this case, it seems wise to provide that the patent should be seized and resold, and so kept alive for useful exploitation, rather than to provide for its cancelation.

6. It should be made clear that the provisions described in paragraphs 1 to 5 shall be applicable to any extension, renewal, or modification of any existing license, contract of assignment, or contract of sale or other disposition, with the same force and effect as to any new license, sale, assignment, or other disposition.

ANTITRUST LAWS

The committee does not feel that it has yet sufficiently surveyed the field to suggest a thoroughgoing revision of the antitrust procedure, although this possibility may be definitely indicated for the future. What the character of that revision may be is still uncertain, because the committee has not yet been able to complete the necessary analysis. Nonetheless, there are certain obvious recommendations which should be made now. These are to strengthen the civil remedies now provided by the antitrust statutes and to amend section 7 of the Clayton Act so as to prohibit uneconomic corporate mergers.

(*1*) *Inadequacy of existing civil remedies.*

At present, the sole civil remedy worth mentioning available to the Department of Justice is an action in equity to enjoin a violation or threatened violation of the antitrust laws. Such an action is useful in certain situations, notably cases in which the termination of illegal control exercised by one corporation over another can be effected only through some form of corporate reorganization. However, it is almost useless as a preventive. A businessman contemplating a course of action in violation of the antitrust laws will hardly be deterred therefrom by the risk of an injunction. Assuming that he desires to engage in such course of conduct, his choice (aside from the influence of the criminal remedies, discussed below) is between checking himself at the outset, and proceeding as long and as far as he can until checked by an action for injunction which may never be brought against him and which may be unsuccessful if brought. Additional civil remedies should produce these two main results, (1) a substantial strengthening of antitrust enforcement, and (2) fairer enforcement of those laws, more realistically adjusted to the nature of the problem.

(*2*) *The criminal remedies.*

Because of the inadequacy of the existing civil remedies, the Department of Justice has in effect been confronted by a choice between ineffectual administration and criminal enforcement. In consequence, the Department has adopted the criminal proceeding as its normal procedure against violations of the antitrust laws.

This course, while the best available to the Department, is not entirely satisfactory. For one thing, use of the criminal remedy makes it extremely difficult to keep clearly before the public, the business community, and the courts the all-important fact that the antitrust laws must be regarded primarily as an economic instrument and not as a moral tract. The connection between the idea of criminality and the idea of some sort of moral obloquy is deeply rooted both in the law and in the national psychology. In consequence, it is frequently very difficult to enforce criminal penalties for unlawful acts which have a pernicious economic effect but which are done by responsible and reasonably well-intentioned men; and, conversely, responsible and normally law-abiding businessmen who have engaged in conduct in violation of the antitrust laws with harmful economic consequences, but who have had no intention of moral wrongdoing, feel outraged by the institution of criminal proceedings against them. There are, moreover, many technical difficulties in the way of a successful criminal prosecution, e. g., the Government has to prove its case beyond a reasonable doubt rather than by a preponderance of evidence as in civil actions; and the Government may not appeal from adverse decisions.

Another difficulty with the criminal procedure is the fact that in many cases the indictment and not the fine tends to be the real punishment for most businessmen. As a practical matter it is impossible to get jail sentences, due probably to the respectable character of defendants involved, and to the fact that the offense is usually not one involving moral turpitude. The stigma of indictment, therefore, tends often to be the real punishment. When this is so, the real punishment comes at the beginning of a trial instead of at the end.

Finally, the indictment process is sometimes extremely unfair to persons who have been forced into a combination in restraint of trade by the necessity of survival in a complex business structure. This may be illustrated by an actual example which is from the files of the Department of Justice. The "A" company is an aggressive combination enforcing price policies by methods of retaliation. The president of the "B" company, one of the victims of that aggressive policy stated that he always followed the prices of the "A" company because he didn't dare do anything else. When asked why he did not dare to follow his own prices, he replied, "I hope never to be able to answer that question from actual experience." Further investigation of this particular situation disclosed that the "A" and "B" companies had entered into an agreement in restraint of trade. If these companies are prosecuted both will have to be indicted. The aggressor may receive a $5,000 fine; the victim may receive only a suspended sentence or a minimum fine. However, since the indictment is itself a kind of punishment for the victim, a suspended sentence would not iron out the inequity of the situation.

With appropriate civil remedies, a court can take into account considerations which make the criminal procedure inequitable in the above instance and give appropriate relief at the end of the trial.

Thus the adding of suitable civil remedies to the antitrust procedure will create an enforcement method which, in the ordinary case not involving moral turpitude, is not only fairer but more effective.

(3) *The need for additional civil remedies.*

Plainly, therefore, there is a serious need for new and effective civil remedies realistically adjusted to the problem of enforcement and to the nature of antitrust violations.

(4) *The proposed new civil remedies.*

In effect, the proposal would treat a violation of the antitrust laws as a kind of tort against the national economy and the general public interest, for which an appropriate civil action may be brought by the United States. It is recognized, moreover, that corporations are directed by human beings, and that sanctions, to be effective, must be brought home to the really responsible officers and directors.

The new remedies fall into two principal groups: Actions in the nature of actions for damages brought by the United States against offending companies and against the responsible officers and directors thereof, and actions to suspend or terminate employment by an offending company of the officers and directors responsible for the violation. In the former type of action, an offending company forfeits to the United States a sum equal to twice the total of net income received by or accruing to such company during the period of violation, and an offending officer or director forfeits to the United States a sum similarly measured by the compensation he has received during the period of violation. In short, these provisions are designed to make a violation of the antitrust laws a very bad business risk both for the company and for its responsible officers and directors. The burden of the new sanctions is adjusted automatically to the size and wealth of the offender, and to the amount of his gain from the unlawful venture.

In addition, the proposal would amend section 14 of the Clayton Act in order to fix responsibility more clearly for any violation of the antitrust laws by any company upon its responsible officers or directors who have done, or authorized, ordered, or caused to be done, any act constituting in whole or in part such violation. There are also a number of minor technical changes which are made necessary by the principal changes, or which are desirable to clarify the law.

It should be noted that the criminal penalty is left unchanged and may still be used. But, with the new civil remedies available, it will be practicable to restrict the use of the criminal process to cases in which it is clearly appropriate.

AMENDMENT OF THE CLAYTON ACT

1. The first two paragraphs of section 7 of the Clayton Act, amendment of which is suggested by the Federal Trade Commission, prohibit a corporation from acquiring the whole or any part of the *stock or other share capital* of another corporation or corporations engaged in interstate commerce, under the conditions therein stated. This proposition was designed to prevent monopolistic corporate mergers.

Since 1930 the Federal Trade Commission has repeatedly pointed out in its annual and special reports to Congress that acquisition of assets is the procedure now usually employed by corporations engaged in interstate commerce in effecting consolidations and mergers, for the purpose of evading this section; and the Commission has consistently recommended that acquisition of assets be declared unlawful under the same conditions which are already applied to the acquisitions of stock.

Such an amendment is desirable for two reasons: (*a*) The evils sought to be avoided by the section can be accomplished as readily by an acquisition of assets as of capital stock; and (*b*) it has been the experience of the Federal Trade Commission that where there has been an unlawful acquisition of stock, corrective action by the Commission has been thwarted by the acquiring corporation voting the stock, during pendency o a proceeding, to bring about a transfer of the assets of the corporation whose stock was acquired, either to the acquiring corporation or to a subsidiary. The Supreme Court has held (*Thatcher Mfg. Co.* v. *F. T. C.*, and *Swift & Co.* v. *F. T. C.*, 272 U. S. 554; *Arrow-Hart & Hegeman* v. *F. T. C.*, 291 U. S. 587) that the Commission has no power to order a divestiture of assets, and, of course, an order for divestiture of the stock made valueless by transfer of assets is of no practical effect. Preliminary investigations by the Commission, during the period 1929–35, into 547 mergers show that 54 percent of them involved merging of assets. The proportion increased from year to year during said period and has greatly increased since that time, until nearly all recent consolidations have been brought about through acquisition or merging of assets.

2. The law should be amended to cover the acquisition of the stock of *one* or more corporations, instead of *two* or more as in the present law. The paragraph covers acquisitions by a holding company, and it is manifest that if the holding company acquires the stock of a company in substantial competition with one of its subsidiaries, there is or may be the same restriction or destruction of competition as in the acquisition of two competing companies.

3. Another desirable amendment would prevent the closing of what may be the only available market for the assets of a corporation in bankruptcy or in immediate danger of bankruptcy. A competitor of the corporation in financial difficulties may often be the only available market for its assets, and it is believed that permitting an acquisition under such circumstances will not defeat the purposes of the section, provided the provision is so drafted as to prevent the bringing about of the competitor's financial difficulties by collusion, for the purpose of evading the prohibitions of the section.

4. These changes should be accompanied by a provision to the effect that nothing in the amendatory act shall apply to transactions effected pursuant to authority given by the Civil Aeronautics Authority, Federal Communications Commission, Federal Power Commission, Federal Reserve Board, Interstate Commerce Commission, or the Securities and Exchange Commission. This will avoid any conflict between the provisions of section 7 and the acts administered by the said agencies.

5. If section 7 is amended as above proposed, it will be necessary also to amend section 11 by inserting the words "or assets" after "stock," so that the Federal Trade Commission may be authorized to order a corporation found to have violated section 7 to divest itself of both stock and assets unlawfully acquired.

GENERAL

In addition to the above specific suggestions, there are certain general observations which may be made at this time.

The tendency toward the concentration of control of the economic system in fewer and fewer business executives seems proved.

The consequence of that tendency is a steadily lessening number of competitors.

It has been the traditional conviction of the people of the United States that the opportunity of the citizen to engage in business should not be restricted and that a system of free open competition is best calculated to preserve that opportunity.

It is clear, however, that the financial and other resources required for economic endeavor are becoming increasingly difficult for the ordinary enterpriser to obtain and that concentration of economic power and wealth is accompanied by increasing unemployment and narrowing markets.

The studies of the committee will be pursued in the hope of discovering the measures which will offer broader markets, more employment, and freer opportunities for the people of America.

APPENDIX

IN MEMORIAM

It was with profound sorrow that the members of this Committee learned of the death, on January 11, 1939, of Herman Oliphant, General Counsel of the Treasury Department and the representative of the Department on this Committee.

A most fitting tribute to Mr. Oliphant was made by Admiral Peoples at the meeting of the Committee held on January 16, 1939. Admiral Peoples said:

> It becomes my sad duty to announce the sudden and untimely death of Mr. Herman Oliphant, who was a member of this Committee. He was a man of the highest integrity, of unbounded energy and devotion to duty, and of unrivaled attainments in his chosen field. At the time of his death he played a truly indispensable part in carrying out the work of this Government and his passing causes irreparable loss to this Committee and to the Nation.
>
> Perhaps because he rose from humble beginnings, he never dissassociated himself and his ideas from the common people. Endowed with unusual vision and mental gifts of the highest order, he devoted himself unstintingly to the public good without thought of personal gain or of the effect of his ceaseless labors upon his physical well-being.
>
> Here is a man of whom it can truly be said that he gave his life in the service of his country.
>
> It is with a sense of deep personal loss that I speak briefly of Mr. Oliphant's passing, for all those who had worked with him had real admiration and real affection for him as a man.

Admiral Peoples thereupon offered a resolution expressing the Committee's grief. The resolution was unanimously adopted by a rising vote, and it was directed that a record of the proceedings be transmitted to Mr. Oliphant's family.

RULES GOVERNING PROCEDURE

The Committee has adopted certain resolutions dealing with the procedure to be followed in the exercise of its functions. The more important of these are given herewith.

PROCEDURE WITH RESPECT TO HEARINGS BEFORE TEMPORARY NATIONAL ECONOMIC COMMITTEE CONDUCTED BY VARIOUS MEMBER DEPARTMENTS AND COMMISSIONS UNDER SECTION 3 (B) JOINT RESOLUTION NO. 113, SEVENTY-FIFTH CONGRESS

I. HEARINGS ON REPORTS

It is the view of the executive committee that as a general practice, it will not be necessary or desirable to have public hearings on reports submitted to the Temporary National Economic Committee by the various departments and commissions. Certainly as respects reports based on material deduced at public hearings, a public hearing on such a report would be wholly unnecessary. As respects statistical and general economic reports, the same conclusion seems obvious. There may be, however, some types of reports on which there should be public hearings. In such cases it is recommended that the procedure for presentation of the report at a public hearing be worked out by the Committee case by case.

II. HEARINGS ON INVESTIGATIONS

It is our conclusion that hearings based on data and evidence, collected as a result of investigations and assembled by the various departments and commissions represented on the Committee, be conducted in the following manner:

A. These hearings will be before the full Committee, or a subcommittee, as the case may be, and presented by the representatives of the department or commission which has conducted the investigation.

B. The list of witnesses to be called will be prepared and submitted by the department or commission which has conducted the investigation.

C. Each witness will appear under subpena and testify under oath.

D. In all examination of witnesses, the rules of evidence shall be observed but liberally construed.

E. Witnesses will not be allowed to substitute prepared statements for testimony; nor will prepared statements dealing with facts be allowed to be introduced at the hearings except with the consent of the department or commission making the presentation, unless the Committee in a particular instance otherwise orders.

F. At a later stage in the hearings, opportunity will be afforded interested persons to present to the Committee their views as to what solution or solutions of particular problems would be desirable or necessary. The agenda for presentation of such suggestions should be prepared in the first instance by the respective departments and commissions and presented to the Committee for approval before such hearings are held.

RULES GOVERNING RECEPTION OF MATERIAL FOR THE RECORD

1. Material requested by Committee members from witnesses at hearings, and later submitted by witnesses, will be introduced into the record at a subsequent convenient hearing with a direction to the reporter that it be inserted in the officially printed record in conjunction, insofar as possible, with the hearings with which the material is concerned.

2. Unsolicited material appropos to previous hearings or of general character otherwise relevant to the Committee's work and voluntarily offered by interested persons at other times than during hearings will be received by the Chairman or the executive secretary and the question of its inclusion in the record be decided by the executive committee subject to review be the full Committee. When such material is accepted for the record it should be introduced as outlined in paragraph 1 above.

In both instances, it is requested that the material be addressed to James R. Brackett, executive secretary, Temporary National Economic Committee, Apex Building, Washington, D. C.

PROCEDURE FOR SUBCOMMITTEE HEARINGS

Resolved, The executive committee is authorized to approve and set the date for (*a*) subcommittee hearings, and (*b*) special subcommittee hearings when in their discretion such methods seem advisable in developing relevant data for the committee.

SUBCOMMITTEE HEARINGS

Subcommittees shall be appointed by the Committee and shall include a representative of the agency under the auspices of which the hearings are to be held and a Member of Congress.

Subcommittee hearings shall be conducted by the Committee representative of the agency and the congressional member shall act as chairman of such subcommittee. Any other member of the Committee interested in the matter on which hearings are being held shall automatically become a member of such subcommittee by his attendance at the hearings.

The subcommittee hearings called pursuant to this resolution shall be public. The same rules shall prevail relative to the conduct of the hearings as prevail for the full Committee hearings.

SPECIAL SUBCOMMITTEE HEARINGS

The Committee is further authorized to appoint special subcommittees of one member or more to hear relevant material in the nature of a deposition. The stenographic transcript of such a hearing shall be run off in triplicate, one copy to remain in the custody of the department or agency for whom the hearings are held, one copy to be filed with the executive secretary, and one copy to be furnished the witness or his attorney. The Committee reserves the right to make public the testimony so developed should it so desire.

The witness fees for all individuals called before such subcommittee or for such designee hearing shall be paid for by the Committee. Any expenses incurred for stenographic aid shall likewise be borne by the Committee.

FINANCIAL STATEMENT

Appropriations granted the Committee to date [1]

Title of act	Amount available to the Committee	Amount available to the President for allocation to departments and agencies represented in the Committee	Total appropriation
Second Deficiency Act, fiscal year 1938	$100,000	$400,000	$500,000
Second Deficiency Act, fiscal year 1939	24,000	96,000	120,000
Total	124,000	496,000	620,000

[1] An additional appropriation for the Committee in the amount of $390,000 was provided for in Public Law No. 160, approved June 30, 1939. Of this amount $96,000 was made available to the Committee and $294,000 for distribution among the participating agencies.

Allotments made from the appropriations granted the Committee and the obligations incurred thereunder to June 30, 1939

Agency	Allotment made to participating agencies	Estimated obligations to June 30, 1939	Unobligated balance June 30, 1939
Department of Commerce	$66,705	$65,843	$862
Federal Trade Commission	102,795	102,795	
Department of Justice	126,000	126,000	
Department of Labor	59,000	58,726	274
Securities and Exchange Commission	107,000	106,932	68
Department of the Treasury	34,500	34,500	
Subtotal	496,000	494,796	1,204
Available to Committee	124,000	80,788	43,212
Total	620,000	575,584	44,416

Senate Document No. 173, 75th Cong., 3d Ses.

STRENGTHENING AND ENFORCEMENT OF ANTITRUST LAWS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

RECOMMENDATIONS RELATIVE TO THE STRENGTHENING AND ENFORCEMENT OF ANTITRUST LAWS

APRIL 20 (calendar day, APRIL 29), 1938.—Read; referred to the Committee on the Judiciary and ordered to be printed

To the Congress of the United States:

Unhappy events abroad have retaught us two simple truths about the liberty of a democratic people.

The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in its essence, is fascism—ownership of government by an individual, by a group, or by any other controlling private power.

The second truth is that the liberty of a democracy is not safe if its business system does not provide employment and produce and distribute goods in such a way as to sustain an acceptable standard of living.

Both lessons hit home.

Among us today a concentration of private power without equal in history is growing.

This concentration is seriously impairing the economic effectiveness of private enterprise as a way of providing employment for labor and capital and as a way of assuring a more equitable distribution of income and earnings among the people of the Nation as a whole.

I. THE GROWING CONCENTRATION OF ECONOMIC POWER

Statistics of the Bureau of Internal Revenue reveal the following amazing figures for 1935:

Ownership of corporate assets: Of all corporations reporting from every part of the Nation, one-tenth of 1 percent of them owned 52 percent of the assets of all of them.

And to clinch the point: Of all corporations reporting, less than 5 percent of them owned 87 percent of all the assets of all of them.

Income and profits of corporations: Of all the corporations reporting from every part of the country, one-tenth of 1 percent of them earned 50 percent of the net income of all of them.

And to clinch the point: Of all the manufacturing corporations reporting, less than 4 percent of them earned 84 percent of all the net profits of all of them.

The statistical history of modern times proves that in times of depression concentration of business speeds up. Bigger business then has larger opportunity to grow still bigger at the expense of smaller competitors who are weakened by financial adversity.

The danger of this centralization in a handful of huge corporations is not reduced or eliminated, as is sometimes urged, by the wide public distribution of their securities. The mere number of security holders gives little clue to the size of their individual holdings or to their actual ability to have a voice in the management. In fact, the concentration of stock ownership of corporations in the hands of a tiny minority of the population matches the concentration of corporate assets.

The year 1929 was a banner year for distribution of stock ownership. But in that year three-tenths of 1 percent of our population received 78 percent of the dividends reported by individuals. This has roughly the same effect as if, out of every 300 persons in our population, one person received 78 cents out of every dollar of corporate dividends while the other 299 persons divided up the other 22 cents between them.

The effect of this concentration is reflected in the distribution of national income.

A recent study by the National Resources Committee shows that in 1935–36—

Forty-seven percent of all American families and single individuals living alone had incomes of less than $1,000 for the year; and at the other end of the ladder a little less than 1½ percent of the Nation's families received incomes which in dollars and cents reached the same total as the incomes of the 47 percent at the bottom.

Furthermore, to drive the point home, the Bureau of Internal Revenue reports that estate tax returns in 1936, show that—

Thirty-three percent of the property which was passed by inheritance was found in only 4 percent of all the reporting estates. (And the figures of concentration would be far more impressive, if we included all the smaller estates which, under the law, do not have to report.)

We believe in a way of living in which political democracy and free private enterprise for profit should serve and protect each other—to insure a maximum of human liberty not for a few but for all.

It has been well said that, "The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and penniless."

Today many Americans ask the uneasy question: Is the vociferation that our liberties are in danger justified by the facts?

Today's answer on the part of average men and women in every part of the country is far more accurate than it would have been in 1929 for the very simple reason that during the past 9 years we have been doing a lot of common-sense thinking. Their answer is that if there is that danger it comes from that concentrated private economic power which is struggling so hard to master our democratic government. It will not come, as some (by no means all) of the possessors of that private power would make the people believe—from our democratic government itself.

II. FINANCIAL CONTROL OVER INDUSTRY

Even these statistics I have cited do not measure the actual degree of concentration of control over American industry.

Close financial control, through interlocking spheres of influence over channels of investment, and through the use of financial devices like holding companies and strategic minority interests, creates close control of the business policies of enterprises which masquerade as independent units.

That heavy hand of integrated financial and management control lies upon large and strategic areas of American industry. The small-business man is unfortunately being driven into a less and less independent position in American life. You and I must admit that.

Private enterprise is ceasing to be free enterprise and is becoming a cluster of private collectivisms; masking itself as a system of free enterprise after the American model, it is in fact becoming a concealed cartel system after the European model.

We all want efficient industrial growth and the advantages of mass production. No one suggests that we return to the hand loom or hand forge. A series of processes involved in turning out a given manufactured product may well require one or more huge mass-production plants. Modern efficiency may call for this. But modern efficient mass production is not furthered by a central control which destroys competition between industrial plants each capable of efficient mass production while operating as separate units. Industrial efficiency does not have to mean industrial empire building.

And industrial empire building, unfortunately, has evolved into banker control of industry. We oppose that.

Such control does not offer safety for the investing public. Investment judgment requires the disinterested appraisal of other people's management. It becomes blurred and distorted if it is combined with the conflicting duty of controlling the management it is supposed to judge.

Interlocking financial controls have taken from American business much of its traditional virility, independence, adaptability, and daring—without compensating advantages. They have not given the stability they promised.

Business enterprise needs new vitality and the flexibility that comes from the diversified efforts, independent judgments and vibrant energies of thousands upon thousands of independent businessmen.

The individual must be encouraged to exercise his own judgment and to venture his own small savings, not in stock gambling but in

new enterprise investment. Men will dare to compete against men but not against giants.

III. THE DECLINE OF COMPETITION AND ITS EFFECTS ON EMPLOYMENT

In output per man or machine we are the most efficient industrial nation on earth.

In the matter of complete mutual employment of capital and labor we are among the least efficient.

Our difficulties of employing labor and capital are not new. We have had them since good, free land gave out in the West at the turn of the century. They were old before we undertook changes in our tax policy or in our labor and social legislation. They were caused not by this legislation but by the same forces which caused the legislation. The problem of bringing idle men and idle money together will not be solved by abandoning the forward steps we have taken to adjust the burdens of taxation more fairly and to attain social justice and security.

If you believe with me in private initiative, you must acknowledge the right of well-managed small business to expect to make reasonable profits. You must admit that the destruction of this opportunity follows concentration of control of any given industry into a small number of dominating corporations.

One of the primary causes of our present difficulties lies in the disappearance of price competition in many industrial fields, particularly in basic manufacture where concentrated economic power is most evident—and where rigid prices and fluctuating pay rolls are general.

Managed industrial prices mean fewer jobs. It is no accident that in industries like cement and steel where prices have remained firm in the face of a falling demand pay rolls have shrunk as much as 40 and 50 percent in recent months. Nor is it mere chance that in most competitive industries where prices adjust themselves quickly to falling demand, pay rolls and employment have been far better maintained. By prices we mean, of course, the prices of the finished articles and not the wages paid to workers.

When prices are privately managed at levels above those which would be determined by free competition, everybody pays.

The contractor pays more for materials; the homebuilder pays more for his house; the tenant pays more rent; and the worker pays in lost work.

Even the Government itself is unable, in a large range of materials, to obtain competitive bids. It is repeatedly confronted with bids identical to the last cent.

Our housing shortage is a perfect example of how ability to control prices interferes with the ability of private enterprise to fill the needs of the community and provide employment for capital and labor.

On the other hand, we have some lines of business, large and small, which are genuinely competitive. Often these competitive industries must buy their basic products from monopolistic industry, thus losing, and causing the public to lose, a large part of the benefit of their own competitive policy. Furthermore, in times of recession, the practices of monopolistic industries make it difficult for business or agriculture, which is competitive and which does not curtail production below normal needs, to find a market for its goods even at

reduced prices. For at such times a large number of customers of agriculture and competitive industry are being thrown out of work by those noncompetitive industries which choose to hold their prices rather than to move their goods and to employ their workers.

If private enterprise left to its own devices becomes half-regimented and half-competitive, half-slave and half-free, as it is today, it obviously cannot adjust itself to meet the needs and the demands of the country.

Most complaints for violations of the antitrust laws are made by businessmen against other businessmen. Even the most monopolistic businessman disapproves of all monopolies but his own. We may smile at this as being just an example of human nature, but we cannot laugh away the fact that the combined effect of the monopolistic controls which each business group imposes for its own benefit inevitably destroys the buying power of the Nation as a whole.

IV. COMPETITION DOES NOT MEAN EXPLOITATION

Competition, of course, like all other good things, can be carried to excess. Competition should not extend to fields where it has demonstrably bad social and economic consequences. The exploitation of child labor, the chiseling of workers' wages, the stretching of workers' hours, are not necessary, fair, or proper methods of competition. I have consistently urged a Federal wages-and-hours bill to take the minimum decencies of life for the working man and woman out of the field of competition.

It is of course necessary to operate the competitive system of free enterprise intelligently. In gaging the market for their wares businessmen, like the farmers, should be given all possible information by government and by their own associations so that they may act with knowledge and not on impulse. Serious problems of temporary overproduction can and should be avoided by disseminating information that will discourage the production of more goods than the current markets can possibly absorb or the accumulation of dangerously large inventories for which there is no obvious need.

It is, of course, necessary to encourage rises in the level of those competitive prices, such as agricultural prices, which must rise to put our price structure into more workable balance and make the debt burden more tolerable. Many such competitive prices are now too low.

It may at times be necessary to give special treatment to chronically sick industries which have deteriorated too far for natural revival, especially those which have a public or quasi-public character.

But generally over the field of industry and finance we must revive and strengthen competition if we wish to preserve and make workable our traditional system of free private enterprise.

The justification of private profit is private risk. We cannot safely make America safe for the businessman who does not want to take the burdens and risks of being a businessman.

V. THE CHOICE BEFORE US

Examination of methods of conducting and controlling private enterprise which keep it from furnishing jobs or income or opportunity for one-third of the population is long overdue on the part of those

who sincerely want to preserve the system of private enterprise for profit.

No people, least of all a democratic people, will be content to go without work or to accept some standard of living which obviously and woefully falls short of their capacity to produce. No people, least of all a people with our traditions of personal liberty, will endure the slow erosion of opportunity for the common man, the oppressive sense of helplessness under the domination of a few, which are overshadowing our whole economic life.

A discerning magazine of business has editorially pointed out that big-business collectivism in industry compels an ultimate collectivism in government.

The power of a few to manage the economic life of the Nation must be diffused among the many or be transferred to the public and its democratically responsible government. If prices are to be managed and administered, if the Nation's business is to be allotted by plan and not by competition, that power should not be vested in any private group or cartel, however benevolent its professions profess to be.

Those people, in and out of the halls of government, who encourage the growing restriction of competition either by active efforts or by passive resistance to sincere attempts to change the trend, are shouldering a terrific responsibility. Consciously or unconsciously they are working for centralized business and financial control. Consciously or unconsciously they are therefore either working for control of the Government itself by business and finance or the other alternative—a growing concentration of public power in the Government to cope with such concentration of private power.

The enforcement of free competition is the least regulation business can expect.

VI. A PROGRAM

The traditional approach to the problems I have discussed has been through the antitrust laws. That approach we do not propose to abandon. On the contrary, although we must recognize the inadequacies of the existing laws, we seek to enforce them so that the public shall not be deprived of such protection as they afford. To enforce them properly requires thorough investigation not only to discover such violations as may exist but to avoid hit-and-miss prosecutions harmful to business and government alike. To provide for the proper and fair enforcement of the existing antitrust laws I shall submit, through the Budget, recommendations for a deficiency appropriation of $200,000 for the Department of Justice.

But the existing antitrust laws are inadequate—most importantly because of new financial economic conditions with which they are powerless to cope.

The Sherman Act was passed nearly 40 years ago. The Clayton and Federal Trade Commission Acts were passed over 20 years ago. We have had considerable experience under those acts. In the meantime we have had a chance to observe the practical operation of large-scale industry and to learn many things about the competitive system which we did not know in those days.

We have witnessed the merging-out of effective competition in many fields of enterprise. We have learned that the so-called competitive system works differently in an industry where there are

many independent units, from the way it works in an industry where a few large producers dominate the market.

We have also learned that a realistic system of business regulation has to reach more than consciously immoral acts. The community is interested in economic results. It must be protected from economic as well as moral wrongs. We must find practical controls over blind economic forces as well as over blindly selfish men.

Government can deal and should deal with blindly selfish men. But that is a comparatively small part—the easier part—of our problem. The larger, more important and more difficult part of our problem is to deal with men who are not selfish and who are good citizens, but who cannot see the social and economic consequences of their actions in a modern economically interdependent community. They fail to grasp the significance of some of our most vital social and economic problems because they see them only in the light of their own personal experience and not in perspective with the experience of other men and other industries. They therefore fail to see these problems for the Nation as a whole.

To meet the situation I have described, there should be a thorough study of the concentration of economic power in American industry and the effect of that concentration upon the decline of competition. There should be an examination of the existing price system and the price policies of industry to determine their effect upon the general level of trade, upon employment, upon long-term profits and upon consumption. The study should not be confined to the traditional antitrust field. The effects of tax, patent, and other Government policies cannot be ignored.

The study should be comprehensive and adequately financed. I recommend an appropriation of not less than $500,000 for the conduct of such comprehensive study by the Federal Trade Commission, the Department of Justice, the Securities and Exchange Commission, and such other agencies of government as have special experience in various phases of the inquiry.

I enumerate some of the items that should be embraced in the proposed study. The items are not intended to be all inclusive. One or two of the items, such as bank holding companies and investment trusts, have already been the subject of special study, and legislation concerning these need not be delayed.

(1) *Improvement of antitrust procedure.*—A revision of the existing antitrust laws should make them susceptible of practical enforcement by casting upon those charged with violations the burden of proving facts peculiarly within their knowledge. Proof by the Government of identical bids, uniform price increases, price leadership, higher domestic than export prices, or other specified price rigidities might be accepted as prima facie evidence of unlawful actions.

The Department of Justice and the Federal Trade Commission should be given more adequate and effective power to investigate whenever there is reason to believe that conditions exist or practices prevail which violate the provisions or defeat the objectives of the antitrust laws. If investigation reveals border-line cases where legitimate cooperative efforts to eliminate socially and economically harmful methods of competition in particular industries are thwarted by fear of possible technical violations of the antitrust laws, remedial legislation should be considered.

As a really effective deterrent to personal wrong-doing, I would suggest that where a corporation is enjoined from violating the law, the court might be empowered to enjoin the corporation for a specified period of time from giving any remunerative employment or any official position to any person who has been found to bear a responsibility for the wrongful corporate action.

As a further deterrent to corporate wrong-doing the Government might well be authorized to withhold Government purchases from companies guilty of unfair or monopolistic practice.

(2) *Mergers and interlocking relationship.*—More rigid scrutiny through the Federal Trade Commission and the Securities and Exchange Commission of corporate mergers, consolidations, and acquisitions than that now provided by the Clayton Act to prevent their consummation when not clearly in the public interest; more effective methods for breaking up interlocking relationships and like devices for bestowing business by favor.

(3) *Financial controls.*—The operations of financial institutions should be directed to serve the interests of independent business and restricted against abuses which promote concentrations of power over American industry.

(*a*) *Investment trusts.*—Investment trusts should be brought under strict control to insure their operations in the interests of their investors rather than of their managers. The Securities and Exchange Commission is to make a report to Congress on the results of a comprehensive study of investment trusts and their operations which it has carried on for nearly 2 years. The investment trust, like the holding company, puts huge aggregations of the capital of the public at the direction of a few managers. Unless properly restricted, it has potentialities of abuse second only to the holding company as a device for the further centralization of control over American industry and American finance.

The tremendous investment funds controlled by our great insurance companies have a certain kinship to investment trusts, in that these companies invest as trustees the savings of millions of our people. The Securities and Exchange Commission should be authorized to make an investigation of the facts relating to these investments with particular relation to their use as an instrument of economic power.

(*b*) *Bank holding companies.*—It is hardly necessary to point out the great economic power that might be wielded by a group which may succeed in acquiring domination over banking resources in any considerable area of the country. That power becomes particularly dangerous when it is exercised from a distance and notably so when effective control is maintained without the responsibilities of complete ownership.

We have seen the multiplied evils which have arisen from the holding company system in the case of public utilities, where a small minority ownership has been able to dominate a far-flung system.

We do not want those evils repeated in the banking field, and we should take steps now to see that they are not.

It is not a sufficient assurance against the future to say that no great evil has yet resulted from holding company operations in this field. The possibilities of great harm are inherent in the situation.

I recommend that the Congress enact at this session legislation that will effectively control the operation of bank holding companies; prevent holding companies from acquiring control of any more banks, directly or indirectly; prevent banks controlled by holding companies from establishing any more branches; and make it illegal for a holding company, or any corporation or enterprise in which it is financially interested, to borrow from or sell securities to a bank in which it holds stock.

I recommend that this bank legislation make provision for the gradual separation of banks from holding company control or ownership, allowing a reasonable time for this accomplishment—time enough for it to be done in an orderly manner and without causing inconvenience to communities served by holding company banks.

(4) *Trade associations.*—Supervision and effective publicity of the activities of trade associations, and a clarification and delineation of their legitimate spheres of activity which will enable them to combat unfair methods of competition, but which will guard against their interference with legitimate competitive practices.

(5) *Patent laws.*—Amendment of the patent laws to prevent their use to suppress inventions, and to create industrial monopolies. Of course, such amendment should not deprive the inventor of his royalty rights, but, generally speaking, future patents might be made available for use by anyone upon payment of appropriate royalties. Open patent pools have voluntarily been put into effect in a number of important industries with wholesome results.

(6) *Tax correctives.*—Tax policies should be devised to give affirmative encouragement to competitive enterprise.

Attention might be directed to increasing the intercorporate dividend tax to discourage holding companies and to further graduating the corporation income tax according to size. The graduated tax need not be so high as to make bigness impracticable, but might be high enough to make bigness demonstrate its alleged superior efficiency.

We have heard much about the undistributed profits tax. When it was enacted 2 years ago, its objective was known to be closely related to the problem of concentrated economic power and a free capital market.

Its purpose was not only to prevent individuals whose incomes were taxable in the higher surtax brackets from escaping personal income taxes by letting their profits be accumulated as corporate surplus. Its purpose was also to encourage the distribution of corporate profits so that the individual recipients could freely determine where they would reinvest in a free capital market.

It is true that the form of the 1936 tax worked a hardship on many of the smaller corporations. Many months ago I recommended that these inequities be removed.

But in the process of the removal of inequities, we must not lose sight of original objectives. Obviously the nation must have some deterrent against special privileges enjoyed by an exceedingly small group of individuals under the form of the laws prior to 1936, whether such deterrent take the form of an undistributed-profits tax or some other equally or more efficient method. And obviously an undistributed profits tax has a real value in working against a further concentration of economic power and in favor of a freer capital market.

(7) *Bureau of Industrial Economics.*—Creation of a Bureau of Industrial Economics which should be endowed with adequate powers to supplement and supervise the collection of industrial statistics by

trade associations. Such a bureau should perform for businessmen functions similar to those performed for the farmers by the Bureau of Agricultural Economics.

It should disseminate current statistical and other information regarding market conditions and be in a position to warn against the dangers of temporary overproduction and excessive inventories as well as against the dangers of shortages and bottleneck conditions and to encourage the maintenance of orderly markets. It should study trade fluctuations, credit facilities, and other conditions which affect the welfare of the average businessman. It should be able to help small-business men to keep themselves as well informed about trade conditions as their big competitors.

No man of good faith will misinterpret these proposals. They derive from the oldest American traditions. Concentration of economic power in the few and the resulting unemployment of labor and capital are inescapable problems for a modern "private enterprise" democracy. I do not believe that we are so lacking in stability that we will lose faith in our own way of living just because we seek to find out how to make that way of living work more effectively.

This program should appeal to the honest common sense of every independent businessman interested primarily in running his own business at a profit rather than in controlling the business of other men.

It is not intended as the beginning of any ill-considered "trust-busting" activity which lacks proper consideration for economic results.

It is a program to preserve private enterprise for profit by keeping it free enough to be able to utilize all our resources of capital and labor at a profit.

It is a program whose basic purpose is to stop the progress of collectivism in business and turn business back to the democratic competitive order.

It is a program whose basic thesis is not that the system of free private enterprise for profit has failed in this generation, but that it has not yet been tried.

Once it is realized that business monopoly in America paralyzes the system of free enterprise on which it is grafted, and is as fatal to those who manipulate it as to the people who suffer beneath its impositions, action by the Government to eliminate these artificial restraints will be welcomed by industry throughout the Nation.

For idle factories and idle workers profit no man.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *April 29, 1938.*

[PUBLIC RESOLUTION—NO. 113—75TH CONGRESS]

[CHAPTER 456—3D SESSION]

[S. J. Res. 300]

JOINT RESOLUTION

To create a temporary national economic committee

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a temporary national economic committee (hereinafter referred to as the "committee"), to be composed of (1) three Members of the Senate, to be appointed by the President of the Senate; (2) three Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives; and (3) one representative from each of the following departments and agencies, to be designated by the respective heads thereof: Department of Justice, Department of the Treasury, Department of Labor, Department of Commerce, the Securities and Exchange Commission, and the Federal Trade Commission. Such representative may designate an alternate to sit and act for him on the committee in his absence. Any such alternate, while so acting, shall have the same rights, powers, and duties as are conferred and imposed upon a member of the committee by this joint resolution. Any member appointed under clauses (1) and (2) may, when unable to attend a meeting of the committee, authorize another such member to act and vote for him in his absence. A vacancy in the committee shall not affect the power of the remaining members to execute the functions of the committee and shall be filled in the same manner as the original selection.

SEC. 2. It shall be the duty of the committee—

(a) To make a full and complete study and investigation with respect to the matters referred to in the President's message of April 29, 1938, on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services and to hear and receive evidence thereon, with a view to determining, but without limitation, (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption; and (3) the effect of existing tax, patent, and other Government policies upon competition, price levels, unemployment, profits, and consumption; and shall investigate the subject of governmental adjustment of the purchasing power of the dollar so as to attain 1926 commodity price levels; and

(b) To make recommendation to Congress with respect to legislation upon the foregoing subjects, including the improvement of anti-trust policy and procedure and the establishment of national stand-

ards for corporations engaged in commerce among the States and with foreign nations.

SEC. 3. (a) The committee shall have power to appoint subcommittees to assist the committee in its work. The members of the committee shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the exercise of the functions vested in the committee.

(b) The Department of Justice, Department of the Treasury, Department of Labor, Department of Commerce, the Securities and Exchange Commission, and the Federal Trade Commission are directed to appear before the committee or its designee and present evidence by examination of witnesses or the introduction of documents and reports. The evidence presented by each of these agencies shall cover the subject matter of this inquiry which is within its administrative jurisdiction under existing law or which may be assigned to such agencies by the committee. Each such agency is authorized to request the committee to issue such subpoenas as such agency may require for the attendance of witnesses and the production of documents and reports.

(c) The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties. The committee is authorized to utilize the services, information, facilities, and personnel of the departments and agencies of the Government.

SEC. 4. (a) Prior to the opening of the first session of the Seventy-sixth Congress or as soon thereafter as is practicable the committee shall transmit to the President and to the Congress preliminary reports of the studies and investigations carried on by it, and by the departments and agencies represented thereon, together with the findings and recommendations of the committee, and shall submit to the President and to the Congress as soon as practicable thereafter, during or prior to the termination of the Seventy-sixth Congress, further and final reports of the studies and investigations carried out pursuant to this resolution, together with the findings and recommendations of the committee.

(b) A majority of the committee shall constitute a quorum, and the powers conferred upon them by this joint resolution may be exercised by a majority vote.

(c) All authority conferred by this joint resolution shall terminate upon the expiration of the Seventy-sixth Congress.

SEC. 5. For the purpose of this joint resolution the committee, or any subcommittee designated by it, shall be entitled to exercise the same powers and rights as are conferred upon the Securities and Exchange Commission by subsection (c) of section 18 of the Act of August 26, 1935 (49 Stat. 831); and the provisions of subsections (d) and (e) of such section shall be applicable to all persons summoned by subpoena or otherwise to attend and testify or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the committee.

SEC. 6. (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $500,000, or so much thereof as may be necessary, to carry out the provisions of this joint resolution.

(b) Of the funds authorized to be appropriated under subsection (a), not to exceed $100,000 shall be immediately available for expenditure by the committee in carrying out its functions and not to exceed $400,000 shall be available, as the President shall direct, among the departments and agencies represented on the committee to enable them to carry out their functions under this joint resolution.

Approved, June 16, 1938.

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END OF
TITLE